

# EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Defendant

HON. JUDGE JENNIFER G. ZIPPS PRESIDING

Case 4:22-cv-00638-SRB Document 19-4 Filed 01/16/23 Page 2 of 21

1 is plausible on its face," second, the Defendants' Motion to Dismiss completely  
2 ignores a recent Appellate Court ruling overturning a motion to dismiss in TCPA cases  
3 involving offers to buy from telephone consumers, third, Plaintiff's referencing of  
4 violations of 47 U.S.C. § 227(e) by the Defendant in the SAC gets to the "willful"  
5 nature of the Defendants' violations of the TCPA (irrespective of whomever has a  
6 lawful right of action) as well as being in direct response to the Defendants' request  
7 for the Plaintiff to include that detail in the SAC, fourth, Plaintiff has alleged  
8 sufficient facts in the SAC that All Star Investments, LLC is the ultimate beneficiary  
9 of the telemarketing activities engaged in by Homerun Offer, LLC and therefore subject  
10 to vicarious liability of any TCPA violations by Homerun Offer, LLC, and fifth, the  
11 Court has specific jurisdiction in this case over All Star Investments, LLC because  
12 the SAC clearly pleaded facts showing an agency relationship existing between All Star  
13 Investments, LLC and Homerun Offer, LLC.

#### 14 MEMORANDUM OF POINTS AND AUTHORITIES

##### 15 INTRODUCTION

16 The Telephone Consumer Protection Act (TCPA) was ostensibly written, and  
17 promulgated into law, with the express intent of protecting telephone consumers from  
18 telemarketing fraud and abuse. That is precisely what Josh M. Jance v. Homerun Offer  
19 LLC et al. is about. Plaintiff has repeatedly asked the Defendant to put the  
20 Plaintiff's residential cell phone number on the Defendant's company specific "Do Not  
21 Call" list. Plaintiff has repeatedly requested a written copy of the Defendant's "Do  
22 Not Call" list policy. Plaintiff has repeatedly instructed the caller calling on  
23 behalf of the Defendant to go kill herself. The Defendant does not care. The Defendant  
24 continued to harass the Plaintiff with unwanted telephone solicitations violating the  
25 TCPA no matter what the Plaintiff said or did. Plaintiff contends that he has employed  
26 more than sufficiently robust language with the caller calling on behalf of the  
27 Defendant such that any rational person should come to the obvious conclusion that  
28 continuing to call the Plaintiff constitutes a profoundly unwise (and illegal) policy

1 on their part. Had the Defendant stopped calling the Plaintiff after Plaintiff first  
 2 requested to be placed on the Defendant's "Do Not Call" list back on January 16<sup>th</sup>,  
 3 2020, this lawsuit never would have been filed. Instead, the Defendant called the  
 4 Plaintiff another 28 more times in violation of the TCPA, sometimes multiple times per  
 5 day.

#### 8 BACKGROUND

9  
 10 On Tuesday November 10<sup>th</sup>, 2020, Plaintiff and Defense council discussed  
 11 Defendants' intention to file a Motion to Dismiss Plaintiff's claim in this case on  
 12 the telephone. During that phone call, and in a follow-up e-mail later that day, the  
 13 Defense specified the items desired in the Second Amended Claim to satisfy Defense  
 14 with regards to a potential Rule 12 (b)/Rule 12 (c) motion to dismiss. (Copy of e-mail  
 15 included as Exhibit A) This list of items requested included the following information  
 16 for each call:

- 17 1. "The date and time the call was made
- 18 2. Who made the call
- 19 3. What number the call was made from
- 20 4. What number was called
- 21 5. What was said/done in the call. In the current amended claim for example,  
 22 there are various allegations about requests for a written policy, caller  
 23 ID, requests not to be called, the purpose of calls (your real property).  
 24 Etc. But those allegations are general in nature and are not tied to any  
 25 particular call or any particular defendant.
- 26 6. What statutes/regulations were allegedly violated by the call"

27 On December 3rd, 2020, Plaintiff filed the Second Amended Complaint ("SAC")  
 28 with the Court (Dkt. 16). Further, plaintiff contends that the SAC addresses every

1 single item raised by Defense both in the telephone conference held between parties on  
2 November 10<sup>th</sup>, 2020, as well as in the e-mail Defense Council Ben Nielson sent to  
3 Plaintiff (also on November 10<sup>th</sup>, 2020) with regards to satisfying Defense requirements  
4 pursuant to any potential Rule 12(b)/Rule 12(c) motion to dismiss.

5 On December 14<sup>th</sup>, 2020, Defense filed a Motion to Dismiss (Dkt. 19) ("DMTD")  
6 Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(2) and Rule 12(b)(6). Most  
7 significantly, Defendant has not brought forward any evidence what so ever to support  
8 any issue raised in the DMTD. Nor has Defendant disputed (let alone presented any  
9 evidence) that it did not make such calls to thousands, if not hundreds of thousands,  
10 of individuals, like Plaintiff, in an effort to solicit the purchase of their  
11 property. Instead, Defendant attempts to argue that Plaintiff has not plead sufficient  
12 details about the calls Plaintiff received to state a claim under the TCPA. This is  
13 absurd. The SAC, all 94 pages of it, addresses every single request for detail made by  
14 the Defendant in the e-mail sent to Plaintiff on November 11<sup>th</sup>, 2020. (Exhibit A)  
15 Further, the SAC provides a level of detail regarding each call that goes far beyond  
16 what other courts have required as far as sustaining Rule 12(b)(6) motions to dismiss  
17 at the pleading stage. Here, Plaintiff sufficiently alleges enough facts to establish  
18 (amongst other claims), (1) use of an ATDS by the Defendant, (2) failure to honor a  
19 company specific "Do Not Call" List, and (3) vicarious liability amongst Defendants.  
20 To demand more, as the Defendant does, would contravene Ninth Circuit precedent and  
21 unfairly burden Plaintiff at the pleading stage to somehow Determine the precise  
22 equipment Defendant used to call the Plaintiff (and to unravel the morass of nested  
23 LLCs and deliberately abstruse ownership structures utilized by Defendant) with  
24 regards to the calls placed by the Defendant before there has been any opportunity for  
25 corroborating discovery. As such, motion to Dismiss should be denied.

ARGUMENT**I. LEGAL STANDARD**

A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) "tests the legal sufficiency of a complaint." *Jones v. HCA*, 16F Supp. 3d 622, 628 (E.D. Va. 2014). To survive such a motion, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "[A] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Jones*, 16F. Supp. 3d at 628.

A motion to dismiss contesting the court's personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) tests the sufficiency of contacts by a Defendant within an area to establish that the Defendant isn't hauled into a distant and inconvenient forum, which the Defendant has little or no connection with.

**A. Response to Defendant's Claim that Plaintiff Has Failed To State Any Claim****Under the TCPA**

In the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint ("DMTD"), Defense writes that "Plaintiff has failed to allege facts demonstrating even the basic elements of such a claim." (DMTD ¶¶ page 7 11-12) This statement in the DMTD is demonstrably false.

For TCPA ATDS cases where Defendants file Rule 12(b)(6) Motions to Dismiss, Plaintiff's confront two central issues. First, when a telephone consumer receives a call from someone "it would be impossible, absent discovery, for any plaintiff to gather sufficient evidence regarding the type of machine used." *Lozano v. Twentieth Century Fox Film Corp.*, 702 F. Supp. 2d 999, 1010-11 (N.D. Ill. 2010). Second, there is no established "pleading standard" for claims to overcome a Rule 12(b)(6) motion to

1 dismiss when alleging use of an ATDS. (*Michael Drew v. America Directions Research*  
2 *Group*, Case No. 20-cv-00402, 2020 WL6118539 (N.D. Ill. Oct. 16, 2020) relying on  
3 *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 460 (7<sup>th</sup> Cir. 2020)) As such, Plaintiff  
4 included a level of detail in the SAC to far exceed what other courts have required to  
5 sustain a Rule 12(b)(6) motion to dismiss:

6       1. Plaintiff alleges a pause of several seconds at the beginning of each call  
7       2. Plaintiff alleges a generic impersonal text recited by the caller to  
8       purchase Plaintiff's property  
9       3. Plaintiff alleges use of VoIPS by Defendant to make the calls  
10       4. Plaintiff alleges use of "spoofed" numbers to place calls made to Plaintiff  
11 This exceeds the finding in *Zeidel v. Nat'l Gas & Elec., LLC* (18CV06792 (N.D. Ill. May  
12 17, 2019)).

13       In *Zeidel Id.*, the Court found that allegations of "generic promotional  
14 content" and "different spoofed numbers" sufficient to state a claim for ATDS use. The  
15 SAC more than sufficiently alleges "generic promotional content" (impersonal/non-  
16 specific offers to purchase Plaintiff's property) and "different spoofed numbers"  
17 (Plaintiff alleges all numbers utilized by Defendant to call Plaintiff were  
18 "spoofed"). The SAC satisfies both pleading metrics.

19       Defense argues that "Plaintiff's attempt to satisfy this ("spoofing") element  
20 of his § 227(b) claims rests entirely on his bald and unsupported allegation that the  
21 calls places to his cellular telephone were made using "spoofed" VoIP calls." (DMTD  
22 page 7 (line 25.5)- page 8 (line 2). The claim is not "bald." When Plaintiff  
23 investigated the origin of the calls Plaintiff received, Plaintiff specifically looked  
24 for telemarketers in Benson, Arizona and could not find any telemarketers, let alone  
25 one engaging in a telephone campaign targeting Pima County property owners and on  
26 behalf of the Defendant. If the Defendant in fact operates a call center out of Benson  
27 Arizona (or contracts with one), then that fact can be established in discovery.  
28

1 Further, Defense could have provided affidavits and/or contracts documenting the  
2 existence of such a call center in Benson, Arizona in the DMTD, but failed to do so.

3 **B. Response to Defendant's Claim that the alleged calls were not prohibited**  
4 **under 47 U.S.C. § 227(c)**

5 Defendant alleges that the calls made to Plaintiff's residential cellular  
6 telephone do not violate 47 U.S.C. § 227(c). This argument completely ignores more  
7 recent court findings (Fischbein v. Olson Research Group, Inc. 959 F. 3d 559-568) that  
8 solicitations to purchase count as advertisements under the TCPA. More specifically,  
9 the majority opinion held that "a fax attempting to sell goods or services is no less  
10 commercial than a fax attempting to sell goods or services to the recipient."  
11 Plaintiff contends that a call made attempting to buy Plaintiff's property is no less  
12 commercial than a call made intending to sell Plaintiff property. Further, Plaintiff  
13 would argue that language substantially consisting of "put me on your do not call  
14 list, provide me with a written copy of your do not call list policy, and then go kill  
15 yourself," should more than sufficiently communicate, and without any ambiguity, that  
16 the recipient of that call wishes for the caller to henceforth refrain from dialing  
17 that number.

18 Additionally, Defendant claims that Plaintiff must allege that Plaintiff's  
19 telephone number is registered on the National "Do Not Call" List. This is patently  
20 false.

21 47 CFR § 64.1200 (d) (3) begins "If a person or entity making a call for  
22 telemarketing purposes (or on whose behalf such a call is made) receives a request  
23 from a residential telephone subscriber not to receive calls from that person or  
24 entity, the person or entity must record the request and place the subscriber's name,  
25 if provided, and telephone number on the do-not-call list at the time the request is  
26 made." Plaintiff made that initial request to be placed on Defendant's "Do Not Call"  
27 list on January 16<sup>th</sup>, 2020 and Defendant failed to honor that request.  
28



1           47 CFR § 64.1200 (e) states "The rules set forth in paragraph (c) and (d) of  
2 this section are applicable to any person or entity making telephone solicitations or  
3 telemarketing calls to wireless telephone numbers to the extent described in the  
4 Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and  
5 Regulations Implementing the Telephone Consumer Protection Act of 1991."" The text of  
6 the law couldn't be any plainer.

7           As alleged by Plaintiff repeatedly in the SAC, Defendant called the Plaintiff's  
8 cellular telephone, and Plaintiff repeatedly requested to be placed on the Defendant's  
9 "Do Not Call List." Further, solicitations to buy Plaintiff's property are still  
10 solicitations. Nowhere in 47 CFR 64.1200 does it obligate Telephone consumers to place  
11 their phone number on the National Do Not Call Registry. The Company Specific Do Not  
12 Call List requirement (47 CFR § 64.1200 (d) (3)) is specifically intended to give  
13 consumers the flexibility to pick and choose which telemarketers they do not wish to  
14 receive solicitations (via telephone, fax or text) from.

15           **C. Response to Defendant's Claim that Plaintiff has no private right of Action**  
16 **under 47 U.S.C. § 227(e)**

17           Plaintiff agrees that Plaintiff has no private right of action under 47 U.S.C.  
18 § 227(e). Plaintiff included Defendant's "spoofing" of the phone numbers used to call  
19 the Plaintiff's cellular telephone in the SAC due to three main reasons:

20           First, "spoofing" numbers is consistent with to use of an ATDS. (*Zeidel Id.*)

21           Second, this gets to Defendant's "willful" violation of the TCPA because it  
22 shows that the Defendant engaged in serial TCPA violations whether the right of action  
23 falls on an individual specifically harmed by the Defendant's lawbreaking, the  
24 Attorney General for the State of Arizona, the Attorney General for the State of  
25 Nevada, or the enforcement arm of the Federal Communications Commission ("FCC").

26           Third, in the telephone call and e-mail from November 10<sup>th</sup>, 2020, when parties  
27 discussed Defendant's intention to file a motion to dismiss, Defendant specifically  
28 requested that Plaintiff identify in the SAC "[w]hat statutes/regulations were

1 allegedly violated by the call." (Exhibit A) That e-mail did **not** specify that  
 2 Plaintiff should identify in the SAC "[w]hat statutes/regulations were allegedly  
 3 violated by the call" where Plaintiff has a private right of action. The Defendant  
 4 used "spoofed" numbers. Private right of action or not, that violates 47 U.S.C. §  
 5 227(e).

6 **D. Response to Defendant's Claim that Defendant All Star Investments, LLC,**  
 7 **Should be Dismissed under Rule 12 (b) (6)**

8 Defendant alleges that Plaintiff failed to plead sufficient facts tying All  
 9 Star Investments, LLC to the TCPA wrongdoing of Homerun Offer, LLC in this action.  
 10 This is completely false, and puts an undue burden on Plaintiff at the pleading stage.  
 11 The facts are as follows:

- 12 1. Both Defendants have the same President and CEO (Ryan Pineda)
- 13 2. The parent company of both Defendants (Redeemed Homes, LLC) has the same  
 14 President and CEO as the Defendants (Ryan Pineda)
- 15 3. For all the calls made by Homerun Offer, LLC, and targeting property owners  
 16 in Pima County, there is no evidence Homerun Offer, LLC actually ever  
 17 consummated any real estate transactions in Pima County.
- 18 4. There is evidence that All Star Investments, LLC purchased 6 properties in  
 19 Pima County.
- 20 5. Plaintiff alleges in SAC that all 6 of those property purchases came about  
 21 as a result of the telephone campaign engaged in by Homerun Offer, LLC and  
 22 on behalf of All Star Investments, LLC. (SAC ¶¶ 106-112)

23 Here, Plaintiff's allegations are more than sufficient at this stage of the  
 24 litigation. Even the Defendant stipulates that All Star Investments, LLC would be held  
 25 vicariously liable for Homerun Offer LLC's violations of the TCPA (DMTD Page 14)  
 26 "{u}nder federal common law principles of agency for violations of either section  
 27 227(b) or section 227(c) that are committed by third-party telemarketers." *Gomez v.*  
 28 *Campbell-Ewald Co.*, 768 F.3d 871, 879 (9<sup>th</sup> Cir. 2014) quoting *In re Joint Petition*

1 Filed by Dish Network, LLC, 28 FCC Rcd. 6574, 6574 (2013)) The central issue  
 2 distinguishing this case from *Gomez* is the simple fact that the same individual (Ryan  
 3 Pineda) is the President and CEO of both the agent and the principal as well as the  
 4 parent company for both agent and principal. With regards to agent-principal law,  
 5 "whether an agency relationship exists is for a court to decide based on an assessment  
 6 of the facts of the relationship and not based on how the parties define their  
 7 relationship." *Henderson v. United Student Aid Funds*, 17-55373. Plaintiff contends  
 8 that based on the facts, "a reasonable jury could hold the [D]efendant (All Star  
 9 Investments, LLC) vicariously liable for alleged TCPA violations" by Homerun Offer,  
 10 LLC. *Id.*

11  
 12 Response To Defendant's Rule 12(b)(2) Motion to Dismiss All Star Investments,  
 13 LLC from this Action

14  
 15 In the DMTD, the Defense rightly notes that when courts weigh the merits of a  
 16 Rule 12(b)(2) dismissal motion, courts focus on the "relationship among the defendant,  
 17 the forum, and the litigation," (DMTD quoting *Schaffer v. Heitner*, 433 U.S. 186, 204  
 18 (1977) in order to make a determination on personal jurisdiction. Further, the  
 19 plaintiff bears the burden of establishing that personal jurisdiction exists over a  
 20 defendant. (*Marvix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (2011))  
 21 Given that the DMTD is based solely on written materials, as opposed to an evidentiary  
 22 hearing, the plaintiff is only required to make a *prima facie* showing of  
 23 jurisdictional facts to withstand the motion to dismiss under Rule 12 (b)(2) (*Marvix*  
 24 *Photo*, 647 F.3d at 1223). Further, Under the *Marvix Photo* precedent, courts do not  
 25 assume the truth of allegations in a pleading which are contradicted by affidavit. No  
 26 such affidavits contradicting any part of the SAC are included in the DMTD. In fact,  
 27 the entirety of the Defendant's argument with regards to the Rule 12(b)(2) dismissal  
 28 of All Star Investments, LLC from this action can be simplified down to the claim that

1 the SAC does not plead sufficient facts to establish the court's personal  
2 jurisdiction.

3 For a pleading to establish that a court has specific jurisdiction over a  
4 defendant, a pleading must show that the "defendant's suit-related conduct must create  
5 a substantial connection with the forum state." *Walden v. Fiore*, 134 S.Ct. 1115, 1121  
6 (2014) Additionally, "for a court to exercise specific jurisdiction over a claim,  
7 there must be an 'affiliation between the forum and the underlying controversy,  
8 principally, {an} activity or occurrence that takes place in the forum state."  
9 *Bristol-Meyers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773, 1781 (2017) (quoting  
10 *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 914, 919 (2011))

11 In the Ninth Circuit, a three-part test is utilized to determine if specific  
12 jurisdiction exists: (1) the non-resident must purposefully direct his activities or  
13 consummate some transaction with the forum or resident thereof; (2) the claim must be  
14 one which arises out of or relates to the defendant's forum related activities, and  
15 (3) the exercise of jurisdiction must comport with fair play and substantial justice  
16 (it must be reasonable). *Picot v. Weston*, 780 F.3d 1206, 1211 (9<sup>th</sup> Cir. (2015)) The SAC  
17 satisfies all three parts of the 9<sup>th</sup> Circuit test for determining if specific  
18 jurisdiction exists.

19 **Part 1 of the Specific Jurisdiction test** - Does the non-resident purposefully  
20 direct his activities or consummate some transaction with the forum or resident  
21 thereof? Unequivocally, the answer is 'yes.' This is established in the SAC in several  
22 ways.

23 First, the generic script as stated by the caller employed or contracted by  
24 Defendants when calling the Plaintiff includes "I'm working with a local investor  
25 who's looking to buy a property in the area." SAC ¶¶ 12. Clearly, the caller is  
26 targeting property owners "in the area" (the forum state) and the "local investor" the  
27 caller is "working with" is All Star Investments, LLC.  
28

1 Second, in the SAC ¶¶ 68 and 69, Plaintiff references six property transactions  
2 involving All Star Investments, LLC in Pima County (as documented in the Pima County  
3 Recorder's database), as well as alleging that for all six of those transactions "the  
4 initial contact with the other parties to those transactions came about as a direct  
5 result of the telemarketing activities of Defendant Homerun Offer, LLC." SAC ¶¶ 69.

6 Third, in SAC ¶¶ 70, Plaintiff references an Instagram post made from the  
7 account identified as "ryanpinedashow." The Instagram post (Exhibit B), which includes  
8 a picture of Ryan Pineda (President and CEO of All Star Investments, Homerun Offer,  
9 and parent company for both Defendants Redeemed Homes) wearing a University of Arizona  
10 t-shirt, specifically states "Once we decided to start investing in Tucson, I bought  
11 this shirt." The calls made by Defendant Homerun Offer, LLC (under the direction and  
12 for the benefit of All Star Investments, LLC) that violate the TCPA were clearly  
13 directed at the Plaintiff, a resident of the forum jurisdiction.

14 Fourth, Plaintiff alleges in the SAC that the Defendant engaged in "spoofing"  
15 specifically to better facilitate targeting of residents for Homerun Offer's calling  
16 campaign in the forum state. (SAC ¶¶ 23-27)

17 **Part 2 of the Specific Jurisdiction test** - Does the claim arise out of or  
18 relate to the defendant's forum related activities? Again, the unequivocal answer is  
19 'yes.' The justification for this answer is threefold:

20 First - There is a common ownership structure among the Defendants. Homerun  
21 Offer, LLC and All Star Investments, LLC are both subsidiaries of Redeemed Homes, LLC.  
22 Further, the President and CEO of all three entities is the same person, Ryan Pineda.  
23 There is no evidence to suggest (and the Defense has not provided any evidence or  
24 affidavits to that effect) that the calls in question were made by anyone other than  
25 either an agent or employee of Homerun Offer, LLC. In ¶¶ 65-69 of the SAC, Plaintiff  
26 goes through the allegations showing that the calling campaign engaged in by Homerun  
27 Offer, LLC, and targeting Pima County residents, was designed to find other parties  
28 willing to consummate a real estate transaction with All Star Investments, LLC. This

1 gets directly to the vicarious liability of All Star Investments, LLC for the actions  
2 of Homerun Offer, LLC that violate the TCPA in the forum state.

3 Second - For the Defendant to argue that Plaintiff's claim is unrelated to All  
4 Star Investments, LLC's forum related activities, the Defendant would have to show  
5 (either with documentation or in the form of affidavits) that all six of the  
6 properties purchased by All Star Investments, LLC in Pima County came about from some  
7 means OTHER than stemming from the calling campaign engaged in by Homerun Offer, LLC  
8 and targeting Pima County residents. Defendant has provided no such documentation or  
9 affidavits in the DMTD.

10 Third - For the Defendant to argue that Plaintiff's claim is unrelated to All  
11 Star Investments, LLC's forum related activities, the Defendant would have to provide  
12 some sort of explanation (along with supporting documentation and/or affidavits) for  
13 why Homerun Offer, LLC, was engaging in the calling campaign targeting Pima County  
14 residents in the first place. In addition, that explanation would have to establish  
15 that Homerun Offer, LLC's calling campaign targeting Pima County residents was  
16 completely unrelated to the property purchases made by All Star Investments, LLC in  
17 Pima County. Defendant has provided no such explanation, documentation, or affidavits  
18 in the DMTD.

19 **Part 3 of the Specific Jurisdiction test** - Does the exercise of jurisdiction  
20 comport with fair play and substantial justice? Again, the unequivocal answer is  
21 'yes.'

22 Dismissing All Star Investments, LLC from this action prior to any opportunity  
23 for discovery is premature at this stage of the litigation, especially due to the fact  
24 that the Defendant has provided no evidence contradicting Plaintiff's allegation that  
25 an agent-beneficiary relationship exists between the Defendants.

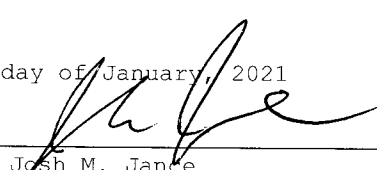
26  
27 Having shown that the Ninth Circuit's a three-part test to determine if  
28 specific jurisdiction exists is satisfied, Plaintiff respectfully requests that the

1 Defendant's Rule 12(b)(2) Motion to Dismiss All Star Investments, LLC from this action  
2 is denied.

3  
4 **CONCLUSION**

5 The TCPA is intended to protect telephone consumers from unwanted  
6 solicitations. The Plaintiff informed the Defendant on January 16<sup>th</sup>, 2020 that  
7 Plaintiff had no interest in ongoing calls from Defendant and soliciting Plaintiff to  
8 consummate a real estate transaction. The Defendant should have stopped calling  
9 Plaintiff then. Instead, Defendant called Plaintiff another twenty-eight more times.  
10 Additionally, the DMTD contains no evidence or affidavits contradicting anything  
11 Plaintiff alleges in the SAC. For the foregoing reasons, Plaintiff's allegations are  
12 more than sufficient at the pleading stage, and Plaintiff respectfully requests that  
13 the Court deny Defendant's Motions to Dismiss Plaintiff's Second Amended Complaint in  
14 its entirety.

15  
16  
17  
18 Dated this 12th day of January, 2021

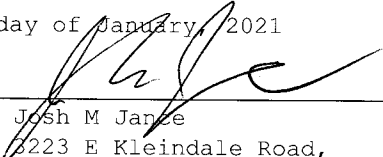
19   
20 Josh M. Jance  
21 3223 E Kleindale Road  
22 Tucson, AZ 85716  
23 520-444-4943  
24 [JoshJance@GMX.com](mailto:JoshJance@GMX.com)  
25 Pro Per  
26  
27  
28

Certificate of service

I hereby certify that on January 12<sup>th</sup>, 2021, I delivered a copy of the attached document via United States Mail to the following address:

John Maston O'Neal  
Quarles & Brady LLP  
Renaissance One  
Two North Central Avenue  
Phoenix AZ, 85004-2391

Dated this 12<sup>th</sup> day of January, 2021

  
Josh M Jance  
3223 E Kleindale Road,  
Tucson, AZ 85716  
JoshJance@GMX.com  
520-444-4943  
Pro Per



# **EXHIBIT A**



## Motion to Dismiss [QBLP-ACTIVE.FID41327776]

**From:** "Nielsen, Benjamin C." <Benjamin.Nielsen@quarles.com>  
**To:** "O'Neal, John M." <John.ONeal@quarles.com>, "joshjance@gmx.com" <joshjance@gmx.com>  
**Cc:** "Hitchens, Debra L." <Debra.Hitchens@quarles.com>  
**Date:** Nov 10, 2020 5:44:21 PM

---

Mr. Jance,

Thanks for talking with us earlier today pursuant to Local Rule 12.1(c) and the Court's order. During our discussion, we expressed our intent to move to dismiss the Amended Claim on several grounds, including insufficient facts alleged in the Amended Claim. You indicated in response that you intended to further amend your pleading in a Second Amended Complaint. You asked that we email you regarding certain deficiencies that we perceive with the Amended Claim that could potentially be cured by amendment.

In that regard, we believe that you should amend to specify, for *each call which is the subject of your claims*:

- The date and time the call was made;
- Who made the call;
- What number the call was made from;
- What number was called;

-What was said/done in the call. In the current amended claim for example, there are various allegations about requests for a written policy, caller ID, requests not to be called, the purpose of calls (your real property), etc. But those allegations are general in nature and are not tied to any particular call or any particular defendant.

<https://3c-bs.gmx.com/mail/client/mail/print?sessionid=DC48ED88317C730A929CB16832454F16-n2.bs09b?mailId=mail16464d717e211f1f>

-What statutes/regulations were allegedly violated by the call.

Best regards,

Ben

125<sup>+</sup>  
YEARS OF  
SERVICE

**Quarles & Brady LLP**

**Benjamin C. Nielsen** / Partner

Benjamin.Nielsen@quarles.com / [LinkedIn](#)

**Quarles & Brady LLP**

One Renaissance Square, Two North Central Avenue / Phoenix, AZ 85004-2391

Office 602-229-5223 / Cell 480-241-6616 / [quarles.com](#)

Assistant Debbie Hitchens (602) 230-5518

VISIT our COVID-19: Guidance for Clients page for the latest updates from Q&B attorneys

On Nov 10, 2020, at 4:25 PM, Nielsen, Benjamin C. (PHX x3223) <Benjamin.Nielsen@quarles.com> wrote:

Mr. Jance,

I've attached for your review a stipulation and proposed order that we'd like to file today. We can sign it on your behalf (indicating that it is with your permission) and file it electronically from our end. You'll get an as-filed copy afterward. Do we have your permission to sign this on your behalf and file today? Please let us know as soon as you can as the Court day is winding down.

Thanks,

Ben

Benjamin C. Nielsen / Partner

Quarles & Brady LLP

Benjamin.Nielsen@quarles.com

One Renaissance Square, Two North Central Avenue / Phoenix, AZ 85004-2391

Office: 602-229-5223/ Cell: 480-241-6616 / [quarles.com](#)

<https://3c-bs.gmx.com/mail/client/mail/print;sessionid=DC48ED88317C730A929CB16832454F16-n2.bs09b?mailid=mai16464d717e2f11f1f>

# **EXHIBIT B**



**ryanpinedashow** • Follow  
Tucson, Arizona

...

**ryanpinedashow** Once we decided to start investing in Tucson, I bought this shirt. After a couple weeks of marketing, we've got two deals locked up! Now I can wear it and pledge my allegiance to the Wildcats 🐾

I will also pledge my allegiance go UNLV, CSUN, and whatever other town we can do business in 🐾

48w



**houses.and.cars.youtube**  
Whaaaaat! Arizona State fan here. 🐾



384 likes

SEPTEMBER 24, 2019

Add a comment...

Post